

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

John L. Penza,)	C/A No. 2:10-292-JFA-RSC
)	
Petitioner,)	
)	
vs.)	ORDER
)	
Warden Robert M. Stevenson, III,)	
)	
Respondent.)	
_____)	

The *pro se* petitioner, John L. Penza, brings this action pursuant to 28 U.S.C. § 2254 alleging various violations of his constitutional rights.

The Magistrate Judge assigned to this action¹ has prepared a Report and Recommendation wherein he opines that the petition is successive and the petitioner has not received permission from the Fourth Circuit Court of Appeals to file a successive § 2254 petition. The Magistrate Judge recommends dismissal of the action without prejudice. The Report sets forth in detail the relevant facts and standards of law on this matter, and the court incorporates such without a recitation.

The petitioner was advised of his right to file objections to the Report and

¹ The Magistrate Judge's review is made in accordance with 28 U.S.C. § 636(b)(1)(B) and Local Civil Rule 73.02. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of those portions of the Report to which specific objection is made and the court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

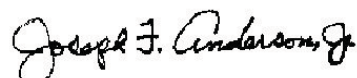
Recommendation, which was entered on the docket on February 12, 2010. Petitioner filed timely objections wherein he contends that his state court remedies are not exhausted. He has also filed a motion to withdraw his § 2254 petition without prejudice contending that because he cannot access the law library while on lock-up, he has no means to research the law in his case.

As the petitioner has not received permission from the Fourth Circuit to file a successive petition, this court is without authority to hear the § 2254 petition or his motion to withdraw. *United States v. Winestock*, 340 F.3d 200, 205 (4th Cir. 2003) (“In the absence of pre-filing authorization, the district court lacks jurisdiction to consider an application containing abusive or repetitive claims.”)

After a careful review of the record, the applicable law, the Report and Recommendation, and the petitioner’s objections thereto, the court finds the Magistrate Judge’s recommendation proper and incorporated herein by reference. Accordingly, this action is dismissed without prejudice and without issuance and service of process. Petitioner’s motion for withdrawal of his petition is moot.

Petitioner’s request for free copies of his initial § 2254 petition filed in civil action number 2:07-518-JFA-RSC is denied.

IT IS SO ORDERED.

A handwritten signature in black ink that reads "Joseph F. Anderson, Jr." The signature is written in a cursive, slightly slanted style.

Joseph F. Anderson, Jr.
United States District Judge

April 12, 2010
Columbia, South Carolina